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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,839	01/29/2004	Pierre Holzschuh	0514-1106-1	2334
466 7590 11/27/2007 YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER STULII, VERA	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/765,839	Applicant(s) HOLZSCHUH ET AL.	
	Examiner Vera Stulii	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 9/4/07.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 2 is objected to because of the following informalities: claim 2 last line should recite E 334. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants' amendments of claims have not been sufficient to overcome claims rejections under 35 U.S.C. 112, second paragraph.

Claims 1-20 and 26 are rendered indefinite for the following reasons:

-the phrases "flavoring to give a smoked flavor" and "at least one step of coloring, independent of said flavoring step, to give a color or nuance to said food product" in claims 1 and 26 remain indefinite. The phrases do not provide a clear denotation of metes and bounds of the claimed invention. As cited in the previous Office action it is not clear whether Applicants mean "imparting" flavor/color to the food product, or there is other interpretation.

-the term "nuance" remains unclear. The term "nuance" in claims 1 and 26 is a term of degree which renders the claim indefinite. The term "nuance" is not defined by

claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

-the phrase "by reinforcing a previous color" is also indefinite. It is not clear as to how the color is being "reinforced", and what does such reinforcement means.

-claims 2, 15, 17 recite the phrase "a substance selected from the group formed by ..." The recitation of a selection from a group of elements in a claim should comply with accepted U.S. Patent practice with regard to the recitation of Markush grouping of claim elements. Phrases using "comprising" are open sets, and should recite elements in the alternative (i.e. "comprising A, B, C or D"), whereas closed sets ("consisting of") should recite elements as "selected from the group consisting of A, B, C and D." See at least claims 2, 15, 17.

-regarding claims 3-6, a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in Ex parte Wu, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of Ex parte

Steigewald, 131 USPQ 74 (Bd. App. 1961); Ex parte Hall, 83 USPQ 38 (Bd. App. 1948); and Ex parte Hasche, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 3-6 recite the broad recitation of temperatures, and the claim also recites different recitation of temperatures which is the narrower statement of the range/limitation.

-in claims 7-8, the phrase "the pyrolysis take place under about 0.1% of a volume of oxygen" is indefinite. It is not clear how pyrolysis may take place under "about 0.1% of a volume of oxygen".

-claim 9 recites the limitation "the organic vegetable material" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 2 does not recite organic material.

-claims 10 and 11 are disjointed with claim 2. Claim 2 recites treating food product with preservation product obtained by pyrolysis, while claims 10 and 11 recite method of pyrolysis;

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 2, 9, 17-18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ande et al.**

The reference and the rejection are incorporated as cited in the previous Office action.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 3-8, 10-12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ande et al (US 4,877,626).**

The reference and the rejection are incorporated as cited in the previous Office action.

As a result of Applicants' amendments, claims 3-6 now recite purification of produced smoke. Regarding this limitation, Applicant is referred to Ande et al Col. 3 lines 23-33:

By liquid smoke it is meant a solution of natural wood smoke constituents. The liquid smoke is produced by the limited burning of hardwoods and the absorption of the smoke so generated into an aqueous solution under controlled conditions. The limited burning keeps some of the undesirable hydrocarbon compounds or tars in an insoluble form, thereby allowing removal of these constituents from the final liquid smoke. Thus, by this procedure, the desirable wood constituents are absorbed into the solution in a balanced proportion and the undesirable constituents may be removed.

**Claims 13-16 and newly added claim 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ande et al (US 4,877,626) in view of Kerry et al (Meat Processing - Improving Quality) and Chiu (4,171,381).**

Newly added claim 26 recites the step of coloring performed by Maillard reaction. Previously rejected claim 13 also recites the step of coloring performed by Maillard reaction.

The reference and the rejection are incorporated as cited in the previous Office action.

***Response to Arguments***

Applicants' arguments filed September 4, 2007 have been fully considered but they are not persuasive.

Regarding Applicants' arguments related to claims rejection under 35 U.S.C. 112, second paragraph, Applicants are referred to the rejection as stated above.

Regarding Applicants' argument related to claims rejections based on Ande et al that "ANDE et al. fails to anticipate instant claim 1 of the present invention, in which a "flavoring" step is independent from the "coloring" step. This means that the coloring step is separate from the first flavoring step and from any first color resulting therefrom, so that a desired color may be obtained" (p.12 of the Remarks), it is noted that:

- Ande et al teach the separate step of flavoring and the separate step of coloring. Applicants are referred to Ande et al Col. 2 lines 25-30 and 40-47. In particular, regarding the step of flavoring, Ande et al disclose that "[w]hen poultry is employed the raw poultry meat muscle may first be injected with a cure or brine solution. Typically, a cure solution would contain water, salt, sugar, sodium phosphates, sodium erythorbate, liquid smoke, cure mix and garlic powder. The cure solution or brine solution may also contain carrageenan" (Col. 2 lines 25-30). Regarding the step of coloring, Ande et al disclose that "[t]he coloring solution contains from 1% to 30% caramel and from 40% to 99% liquid smoke. More preferably, the

smoke. More preferably, the caramel is from 5% to 15% and the liquid smoke is from 50% to 80%. The coloring solution may optionally contain a coloring agent such as bixin which is suitably obtained by using annatto" (Col. 2 lines 40-47).

- Further in this regard, Applicants are referred to Specification page 18 lines 24-31, where Applicants disclose coloring liquid smokes, flavoring liquid smokes and preserving liquid smokes. Therefore Applicant discloses that coloring, flavoring and preserving step is performed by application of solution comprising liquid smoke. Ande et al also discloses steps of coloring and flavoring by treatment with solutions comprising liquid smoke. Applicants disclosure does not appear to differentiate from the prior art.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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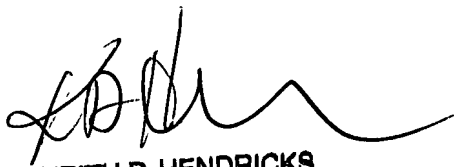
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS

  
KEITH D. HENDRICKS  
SUPERVISORY PATENT EXAMINER